

CHAPTER 10**CORRECTION OF RECORDS****1001 AUTHORITY**

100101. The Secretary of a Military Department, under procedures established by that Secretary and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that Military Department, may correct any military record of that department when the Secretary concerned considers it necessary to correct an error or remove an injustice.

100102. Corrections of military records are final and conclusive on all officers of the United States except when procured through fraud.

100103. If there is to be a proper correction and a right to the payment of money as a result of that proper correction, there must be a change of facts as set out in the original record, or an addition or deletion of a fact. A reaffirmation of the existing facts already in the original record does not constitute a proper correction of that record. A recital of existing facts does not avoid the operation of a statute of limitations. The statute of limitations on a proper correction of the record begins to run from the date of the correction. For example, when the record of a member of the naval service transferred to the Fleet Reserve or the Fleet Marine Corps Reserve was corrected to show additional service credits, the 6-year (10-year before July 1975) limitation period started from the date of the correction of the member's records rather than from the date of the transfer, and upon correction, the member was entitled to retainer pay from the date of transfer in accordance with member's grade and number of years of creditable service, as corrected.

100104. Corrections may be made when:

A. The member, the member's heir, or legal representative filed a request before October 26, 1961, or within 3 years after member has discovered the error or injustice, whichever is later, or

B. The Board excuses a failure to file within 3 years when it is in the interest of justice.

1002 PAY COMPUTATION

100201. Payments based on a correction of military records must be made in the amounts determined to be due by applying pertinent laws and regulations to all the material facts shown in the corrected record. Generally, the payments resulting from the correction of military records are based on the:

A. Pay entitlement the member had before the correction,

B. Actual payments made for these entitlements, and

C. New pay entitlements that accrue as a result of the correction. For specific computation, see the chapters concerning the entitlement to and computation of retired or retainer pay, and participation in and payment of survivor annuities under the Retired Serviceman's Family Protection Plan (RSFPP) and/or the Survivor Benefit Plan (SBP).

100202. The settlement of retired pay, retainer pay, or survivor annuities due as a result of the correction of a military record must be reduced, as applicable, by:

- A. Any previous settlements of active duty pay and allowances involving the same periods
- B. Prior payments of readjustment pay or disability severance pay
- C. Prior payments of disability compensation, pensions, or Dependency and Indemnity Compensation (DIC) made by the Department of Veterans Affairs
- D. Federal income tax
- E. Cost of participation in the Retired Serviceman's Family Protection Plan and/or Survivor Benefit Plan
- F. Dual compensation statutes if a retired Regular officer is employed by the United States Government
- G. Prior payments of the mother's benefit received from social security and the amount of the spouse's social security entitlement, if any, resulting from the retiree's active military service.

100203. When payment cannot be made to the member because of member's death, payment may be made to member's legal representative. In the absence of a demand for payment by the legal representative, payments are made:

- A. To the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment,
- B. In the order of precedence in Chapter 30 or if there is no such law covering order of payment,
- C. As otherwise prescribed by the law applicable to that kind of payment.

100204. A claimant's acceptance of settlement fully satisfies the claim concerned. Settlement of this claim does not preclude payment of a separate and distinct claim and acceptance of settlement does not preclude recomputation and adjustment when there is a mutual mistake. Payments are not authorized for any claim compensated by private law before October 25, 1951.

1003 TAX ADJUSTMENT

See section 2412 of this volume.

1004 APPROPRIATION CHARGES

The payments that become due and payable as a result of the correction are charged to the applicable current retired pay appropriation for all amounts due on and after the date of approval by the Secretary concerned. Amounts due for periods before date of approval by the Secretary concerned are charged to the Claims, Department of Defense appropriation.

1005 RESTRICTIONS

No payment resulting from a correction of records may be made for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.